RECEIVERSHIPS.

One of the most interesting lines of practice of a lawyer is that of receiverships. They differ very materially from insolvency proceedings; the matters involved are, as a rule, large, as courts will not appoint receivers where the amount involved is trivial, and the discretion and authority conferred upon a receiver who is, in fact as well as theory, the arm of the court, is generally so ample that he is not hampered in his management by the fixed and unchangeable rules which restrain a trustee. The method of attacking a receiver's administration of an estate is so much more formal than that of attacking a trustee's administration, that there is always warning of approaching difficulty, and generally, if the matter cannot be satisfactorily adjusted for the interests of all concerned, between the parties, a creditors' meeting will arrange it without undue publicity. In the Probate Court, due to its informalities, often the first information that counsel has of impending trouble is when he receives notice from the judge to appear and be heard, when all the secret history and troubles of the insolvent and the practical difficulties of disposing of his estate satisfactorily, are likely to be aired to the public, through the press, generally to the great detriment of the property to be administered upon, and the ultimate loss of the creditors. The undue haste made necessary by our statutes in the settlement of insolvent estates, does not exist in receiverships, and this frequently allows a reorganization of the property, which otherwise would have been needlessly sacrificed at a forced sale.

The practical importance of having the wisdom of successful men of large experience, like the judges of our higher courts, pass on disputed or contested questions that may arise in the settlement of a concern's affairs, always commends itself to a client. The power, however, to continue the business, which the court frequently confers upon a receiver is the great reason of his superior usefulness.

Receiverships are of great variety, but those simply to collect rents under a foreclosure or to hold possession or administer property pending litigation, are so small in importance as compared with the class of receiverships which involve the settlement of properties, that they can be passed over without notice.

As receivers are only appointed by courts having equitable jurisdiction it is always necessary, in the absence of statutes, to allege facts in the complaint which entitle the court to take cognizance of them as a court of equity. Statutes, however, enlarging the jurisdiction of courts of equity in this respect, are very common. In the absence of a statute a simple creditor of a corporation must show that he has a valid claim against the corporation and that he has exhausted his legal remedies before he can secure the appointment of a receiver, and he must show further that there are assets applicable to the payment of his claim that are liable to be wasted, and that the circumstances are such that to deny the application would entail loss upon him. To show the difficulty of a creditor in securing a receiver for a corporation, it is only necessary to refer to the following cases, which are extremely interesting, as showing the powers of a court of equity in this respect:

Falmouth National Bank *v.* Cape Cod Ship Canal Co., 166 Mass 550; Hollins *v.* Brierfield Coal and Iron Co., 150 U. S. 371.

This last case also holds that even the statute of a State authorizing a creditor to obtain a receiver for a corporation in State courts, would not be recognized in the Federal courts, the case holding that "the line of demarcation between equitable and legal remedies in the Federal courts cannot be obliterated by State legislation."

Usually a receivership is brought about by the action of the insolvent corporation itself, rather than by a suit at the instance of a creditor, stockholder, or bondholder, although in such cases it almost invariably takes the form of a friendly suit, wherein the corporation accepts service of the papers, consents that the same may be entered on the docket of the court immediately, and that the prayer of the papers for a receiver may forthwith be granted. Of course there is always some trouble which precipitates a receivership, like a threatened attachment, or a large amount of indebtedness about to become due, or something of that nature, by which it is rendered necessary—for the preservation of the business or property and the equal protection of all interests—that it should be placed in the hands of the court. It is infrequent, as a rule, that trouble actually occurs before the receiver is appointed, and this is especially the rule, as no attachment or lien is set aside by a receivership, as the receiver takes the property as he finds it unless there is a special statute providing for this contingency. In many States, including our own—Connecticut—there is such a special statute: these

statutes were designed to remedy the great injustice that frequently occurred from an attachment being placed on the property just prior to the receivership, which, from the necessities of the situation, had to be satisfied in full. In such cases the only remedy for an outside creditor was to bring insolvency proceedings to set aside the attachment in States where the bringing of such proceedings has this effect, as it has in many of the States. Even now, in this State, our statute just mentioned is defectively drawn, so that a preference made just before the receivership is still valid, and it is necessary in order to fully protect creditors to frequently resort to insolvency proceedings in addition to the receivership in order to set aside preferences to favored creditors. The reason for the great haste generally shown in the appointment of the receiver has, with the enactment of these statutes, passed away, except in cases where the property is situated in several States.

Formerly receivers were almost universally appointed in chambers, at all times of the day and night, and a receiver once so appointed was rarely disturbed or removed except for cause. This last statement is true to a large extent now, but a change seems to be occurring in this respect, in this jurisdiction, and now judges very frequently appoint a temporary receiver with a comparatively small bond and fix a day for the appointment of a permanent receiver and order notice of it to be forthwith given to all parties in interest; and this practice, when followed, does not put upon objecting creditors who desire the appointment of another person than the nominee of the corporation, for receiver, the burden of showing that the first incumbent is incompetent or undesirable, thus greatly lightening the burdens of the objecting creditors. However, it is a matter of justice to an insolvent concern, in many cases where its affairs have been honestly managed, that the old management should not be entirely ignored in the receivership, and as a rule judges and courts are inclined to look with favor upon the employment of those connected with the business to continue it, and frequently the receiver himself is from the old management. When this is purposed, however, it is safer, if trouble is anticipated, to have some one from an ouside business, who is a creditor, with him, as a co-receiver, who represents the creditors, and who by his presence as co-receiver will assure to them a speedy settlement of the concern's affairs, and also will guard against the mistakes which may have been the cause of the troubles of the old concern. Again, if a re-organization is undertaken, it is frequently

very embarrassing to have a member of the old corporation as sole receiver. As a rule, trustees in insolvency have no greater authority than to complete existing contracts and work up materials on hand, while a receiver under authority of the court may carry on the business and, if the creditors are willing, sometimes the existence of a receivership may be prolonged over many years, the receiver conducting the business the same as the corporation itself would have done. Some judges are extremely strict on this point, and desire in every way that they can to shorten the lives of receiverships, while other judges are very liberal and pay little attention to the matter.

As a matter of justice to private enterprises of a similar nature in the community, it would seem as though they should be saved as much as possible from the unfair and irresponsible competition of business concerns under a receivership, conducting a business for years, for receivers as a rule dispose of what they have on hand below actual cost. It makes but little difference when they do business, whether they do it at a large profit or at about cost, for if they need money, by applying to the court they may issue receiver's certificates and so use up in competition, which ordinary business men cannot meet, the assets of the receivership. Private concerns, for self-protection from this competition, which destroys profits and living expenses, are frequently forced to buy the assets of the receivership.

Where a receiver has no ready money in his hands to conduct the business of the receivership, it is often necessary, if he proposes to carry it on, to raise sufficient money to do so. As a rule the receiver of a manufacturing concern can secure all the credit he needs simply by ordering goods, but receivers of very large corporations, or railroads, almost invariably have to raise ready money, and this is done by issuing receiver's certificates to an amount and in sums as authorized by the court. There is no difficulty where a concern has large assets, in disposing of these certificates, or promissory notes, of the receiver, to banks and individuals. These receiver's certificates, it is needless to say, are a first lien upon the property as it comes into the hands of the receiver, and if the property is unincumbered they are really a first mortgage on all the assets, both real and personal.

The power of the receiver to incur obligations for supplies, materials, etc., is incidental to the power granted to continue the business (Cake *v.* Mohun, 164 U. S. 311). In this way it sometimes happens that great inroads are made upon the assets

of a receivership, even when no power is granted by the court to issue receiver's certificates.

A receivership does not extinguish the corporate life of a corporation, it merely suspends it. Quite frequently the dissolution of the corporation is asked for and is granted in the judgment. However, in any case the corporate life is so far suspended that it is not necessary for the officers of the corporation in a receiver's hands to make annual returns as required by statute.

The court so far protects a receiver in the performance of his duty that it is contempt of court on the part of anyone to sue him, or to make him a defendant in a suit at law, or to in any way interfere with the business of his receivership, unless special permission from the court has first been obtained. Courts are extremely jealous of their receivers in this respect; so jealous that all it is generally necessary to do is to call the attention of opposing counsel to the fact that he is in contempt, and it is very seldom that the attempted interference with a receiver's powers is actually brought to the attention of the court.

It is necessary for a receiver to secure special permission before he brings a suit, or even employs counsel; but in practice all these matters regarding the powers of the receiver are provided for in the order appointing him.

An interesting question in receiverships is that of the taxation of the property. In theory it would seem as though property vested in a receiver should not be taxed and this seems to be the better doctrine. However, that the property should pay taxes somewhere is manifest equity. In theory, property in the hands of a receiver ultimately belongs to the creditors, or stockholders, or members of the corporation, or partnership, in the receiver's hands, as the case may be, but the difficulty in reaching property so situated, for taxation, has led to the almost universal practice of taxing property in the hands of the receiver, and of his applying to the court for permission to pay them; but the receiver has no power, without special permission, to pay taxes, and he will be protected by the court from the tax collector, if need be. Questions concerning taxes seldom arise where the estate is more than sufficient to pay the expenses of the receivership, as the practice is as above indicated, in this jurisdiction. The case of Brooks *v.* Town of Hartford, 61 Conn. 124, bearing upon this subject, is a very interesting one. The practical difficulties of the situation and the manifest equities in favor of charging the property in the hands

of a receiver with its just burden of taxation, have perhaps thus far prevented a decision squarely on this point, although this case would seem to indicate that if this question was squarely presented to our highest court for decision it would be settled that property in the hands of a receiver would not be subject to taxation.

The most troublesome question in the management of receiverships is the extraterritorial authority of the receiver. A receiver appointed in one State has no authority outside the jurisdiction of the State that appoints him, save by the courtesy or comity of the other States, and this courtesy or comity is not always extended, although in recent opinions the authority of receivers in other States has been quite generally recognized, where it does not interfere with existing rights of its own citizens; the tendency is decidedly towards giving foreign receivers greater authority.

The general rule seems to be, as to property belonging to the estate, but situated outside the limits of the jurisdiction appointing the receiver, that the attaching creditor will hold the property, if the attachment, or lien, or other method of security, was obtained before the receiver actually took possession. If the receiver actually takes possession of property belonging to the estate before the attachment is made, he holds the property. In this State there is a very interesting coterie of cases treating of the powers of receivers and trustees in insolvency in this respect—Paine *v.* Lester, 44 Conn. 196; Pond *v.* Cooke, 45 Conn. 126; Blake Crusher Co. *v.* New Haven, 46 Conn. 473; Cooke *v.* Orange, 48 Conn. 401.

As to the receiver's title to accounts outside the State, of course the rule as to the location of personal property is well known, but very frequently under the laws that exist in various jurisdictions, it is a race between the creditors outside the jurisdiction of the court appointing the receiver, and the receiver, to secure possession of accounts belonging to the receiver's estate, owing by persons or corporations outside the State. The laws of the several States are singularly defective in this respect, and great injustice is often done, certain creditors practically securing their claims in full while others share only in the very meagre dividend which the estate may yield. The inequities of the situation should be remedied in some way by uniform legislation throughout the several States. The receiver's title and the recognition of that title is manifestly limited to the jurisdiction of the court that appoints him, but this can be overcome in

a measure, by having the corporation or partnership passing into the hands of the receiver make a common-law assignment of all book accounts and credits to the receiver, and then by the use of the telegraph or telephone, giving notice to all the creditors outside the State that the claim has been assigned to the receiver, following the messages with the usual notices of assignment, in writing. A common-law assignment is recognized as transferring the title, everywhere, no matter in what jurisdiction it is made.

Egbert *v.* Baker, 58 Conn. 319; First National Bank of Rockville *v.* Walker, 61 Conn. 154.

The law in regard to the necessity of notice of the assignment differs in different States, some holding that notice is necessary and others that it is not necessary. In Massachusetts no notice is necessary; in Connecticut notice is necessary. On this subject of an assignment and its effect in another jurisdiction, the case of Clark *v.* Connecticut Peat Co., 35 Conn. 303, is an especially interesting one.

There is another doctrine which is now just becoming generally understood and used, and which is of great benefit to creditors in the equal distribution of the property in insolvency proceedings or under a receivership, and that is the doctrine which was first prominently brought to the notice of the profession in the case of Cole *v.* Cunningham, 133 U. S. 107. This is too short an article to discuss these interesting subjects at length, but this doctrine is in substance that a court having jurisdiction both of the estate to be settled, and of an attaching creditor who claims under the laws of another State, to have an attachment on property belonging to the estate, which was secured prior to the actual insolvency or the receivership, but with knowledge of such steps being taken, will, as a court of equity, acting *in personam*, enjoin such a creditor so having security from availing himself of the benefit of his security, as against the receiver, and so secure the property for the benefit of all the creditors. As good a statement of this principle of law as can be found anywhere is contained in Cook on Stockholders, third edition, Section 867, and note on page 1425. The case of Cole *v.* Cunningham concerned insolvency proceedings, but the principles apply to receiverships as well, so the case has become the leading one on this subject. The language of this very learned opinion at once suggests, whether a court having jurisdiction of a receivership, and a creditor without the State with an attachment either obtained after the appointment of the

receiver, or under the circumstances just mentioned, who presents his claim to the receiver for a dividend from the property, would not, as court of equity, extend the doctrine of Cole *v.* Cunningham, so as to compel him to relinquish his security for the benefit of the receivership before allowing his claim for a dividend. This question has now by inference been practically decided in Reynolds *v.* Adden, 136 U. S 348; this case holds that a creditor not coming within the jurisdiction, of course can take advantage of his attachment in another State as against the receiver, but from reading the opinion, in which this question is touched on, one forms the conclusion that it is not probable that any court would allow, when its attention is called to the fact, a creditor outside its jurisdiction, to at the same time take advantage of such an attachment, and also to take a dividend from the estate. Because of the difficulty of reaching a creditor outside the jurisdiction, it would seem as though courts would, in the future, be frequently called upon to exercise this power.

In connection with receiverships in different States some of the nicest questions arise. Quite frequently, especially in the courts of Massachusetts, it will be found that although receivers are appointed simultaneously in several States, yet the courts there insist upon a complete administration of the affairs of the receivership in that State, down to and including the final dividend, judgment, and order discharging the receiver, although it may be really only an ancillary receivership. In New York State, they are more liberal, and if it happens that the estate is partly in New York and partly in Connecticut, and the corporation is a Connecticut corporation, and all the claims are presented in Connecticut, an order can generally be secured for the removal of the property in New York, after it has been turned into cash, into Connecticut, to be administered upon and divided among the creditors in Connecticut. If all the creditors do not present their claims in both jurisdictions the courts will, if it is suggested to them, order an extension of time in which the creditors are to present their claims, and that notice of it be given to them, so that they will all share alike. As a rule, receiverships in different jurisdictions have to go through their natural course and creditors who fail to present claims in both jurisdictions do not fare alike, but only receive a dividend in the jurisdiction where they presented their claims. It is to be hoped that the American Bar Association will use its great influence to secure a uniformity of practice throughout the States of the

Union, regarding the winding up and settlement of properties which have assets in more than one jurisdiction, so that there may be but one receivership necessary, which is recognized as binding in all the States. It will not only save to creditors the large expense of separate receiverships in each jurisdiction, but will at the same time be equitable in its practical workings in securing an equal distribution of the assets of the receivership.

Samuel C. Morehouse.

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